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RICHARD W. WIEKING  
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NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**EASTERN DIVISION**

ADR  
JSW

11 PENSION BENEFIT GUARANTY CORPORATION, an  
agency of the United States Government,  
12  
13 Plaintiff,

C08-02107

14 v.

Civil Action No.

15 C&G CONTRACTORS, INC., as plan administrator of  
the C&G Contractors, Inc. Defined Benefit Pension Plan

16 Serve: David Van Hoesen  
Agent for Service of Process  
17 2 Bel Air Drive  
Orinda, CA 94563

18 or

19 Jerry L. Guss  
20 President  
C&G Contractors, Inc.  
21 2558 Oliver Avenue  
Oakland, CA 94605

22 or

23 110 Cashman Circle  
24 Sacramento, CA 95835

25 or

26  
27 17622 Big Oaks Grove  
28 Richmond, TX 77469

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NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

COMPLAINT

16/2687

Defendant. }

**COMPLAINT**  
**Administrative Procedures Act Case**

1. This action arises under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), *as amended*, 29 U.S.C. §§ 1301-1461 (2000 & Supp. V 2005). Plaintiff, the Pension Benefit Guaranty Corporation ("PBGC"), brings this action pursuant to 29 U.S.C. § 1342 for an order: (1) terminating the C&G Contractors, Inc. Pension Plan (the "Plan"); (2) establishing October 31, 2004, as the termination date of the Plan; (3) appointing PBGC as statutory trustee of the Plan; and (4) requiring C&G Contractors, Inc. (the "Defendant") to transfer any and all Plan records, assets, property, and documents to PBGC.

**Jurisdiction and Venue**

2. This Court has exclusive jurisdiction over this action, under 29 U.S.C. § 1342(c), (f).

3. Venue properly lies in this Court pursuant to 29 U.S.C. § 1342(g).

**Parties**

4. PBGC is a wholly-owned United States government corporation established under 29 U.S.C. § 1302(a) to administer the pension plan termination insurance program created by Title IV of ERISA and an agency of the United States. PBGC assures the timely payment of pension benefits under pension plans that terminate when covered by Title IV. 29 U.S.C. §§ 1302(a)(2), 1321(a), 1322, 1361.

5. The Defendant is incorporated in California and the Defendant's registered office and principal place of business was located at 2256 Dunn Road, Hayward, California.

6. The Defendant is the contributing sponsor and the plan administrator of the Plan, within the meaning of 29 U.S.C. § 1301(a)(1) and (13).

**Background**

7. The Plan has approximately 7 participants.

8. The Plan is a benefit pension plan within the meaning of 29 U.S.C. § 1002(2) and (35), that is covered by Title IV of ERISA and insured under the pension plan termination

1 insurance program. 29 U.S.C. § 1321(a).

2 9. On or about October 31, 2004, the Defendant terminated all of its employees and  
3 permanently ceased business operations.

4 Count I

5 10. PBGC restates and realleges paragraphs 1 through 9.

6 11. Under 29 U.S.C. § 1342(a), PBGC shall institute proceedings to terminate a  
7 pension plan whenever the agency determines that the plan does not have assets available to pay  
8 benefits currently due under the terms of the plan.

9 12. Following an administrative proceeding, on August 30, 2006, PBGC determined  
10 that: the Plan does not have assets available to pay benefits currently due under the terms of the  
11 Plan and that the Plan must be terminated in order to protect the interests of the Plan's  
12 participants. The agency's determinations are stated in a Notice of Determination ("Notice")  
13 issued by PBGC on August 30, 2006. The Notice further stated that PBGC intends to: (1)  
14 proceed to have the Plan terminated, (2) have PBGC appointed as statutory trustee under  
15 29 U.S.C. § 1342, and (3) have October 31, 2004, established as the Plan's termination date  
16 under 29 U.S.C. § 1348. A copy of the Notice is attached as Exhibit 1.

17 13. Under 29 U.S.C. § 1342(c), PBGC is required to notify the plan administrator of  
18 its determination that the plan should be terminated before applying for a court order terminating  
19 a plan.

20 14. By certified United States Mail return receipt requested, PBGC sent a copy of the  
21 Notice to the Defendant at its last known address on or about August 30, 2006.

22 15. On October 12, 2006, the Notice was returned to PBGC. The Notice and the  
23 returned envelope are attached hereto as Exhibit 2.

24 16. PBGC may apply to the appropriate United States District Court for a decree  
25 adjudicating that a plan must be terminated to protect the interest of participants. 29 U.S.C.  
26 § 1342(c).

27 17. After PBGC determines that a pension plan should be terminated, and upon  
28 application and notice by PBGC under 29 U.S.C. § 1342(c), a United States district court may

1 order the termination of the pension plan if necessary to protect the interests of the participants.

2 18. On or about July 26, 2007, PBGC filed a complaint in this court, Case No. 07-cv-  
3 03837 SC, seeking termination of the Plan, establishment of a termination date and appointment  
4 as statutory trustee. On or about November 5, 2007, PBGC filed a notice of dismissal of the  
5 complaint without prejudice. The case was dismissed without prejudice on November 6, 2007.  
6 PBGC will file the appropriate administrative motion under Loc. R. 3-3(c) and 3-12(b) regarding  
7 whether this case and Case No. 07-03837 SC should be considered related cases.

8 19. Because the Plan does not have assets available to pay benefits currently due  
9 under the Plan, the Plan must be terminated to protect the interests of the participants.

10 Count II

11 20. PBGC restates and realleges paragraph 1 through 19.

12 21. Upon issuing an order terminating the Plan under 29 U.S.C. § 1342(c), a United  
13 States district court must establish the date of termination of the Plan under 29 U.S.C.  
14 § 1348(a)(4).

15 22. A termination date of October 31, 2004, is appropriate because on this date the  
16 Company terminated all of its employees and permanently ceased business operations.  
17 Accordingly, any reasonable expectations by Plan participants that the Plan would continue were  
18 extinguished as of this date. 29 U.S.C. § 1342(c).

19 Count III

20 23. PBGC restates and realleges paragraphs 1 through 22.

21 24. Upon issuing an order terminating the Plan under 29 U.S.C. § 1342(c), a United  
22 States district court must appoint a trustee, which upon application may be PBGC, under  
23 29 U.S.C. § 1342(b) and (c). Upon appointment as trustee, PBGC will administer the Plan in  
24 accordance with Title IV of ERISA.

25 25. PBGC is ready, willing, and able to serve as trustee.

26 Count IV

27 26. PBGC restates and realleges paragraphs 1 through 25.

28 27. The trustee appointed by the Court pursuant to 29 U.S.C. § 1342(c) is authorized,

1 pursuant to 29 U.S.C. § 1342(d), among other things, to pay benefits under the terms of the Plan  
2 and to manage the assets of the Plan. 29 U.S.C. § 1342(d).

3 28. In order to carry out its statutory duties with respect to the Plan, the trustee  
4 appointed by the Court must receive all documents and records relating to the Plan and its  
5 participants, all other property of the Plan, and the assets of the Plan.

6  
7  
8 **Remaining portion of this page intentionally left blank.**

1 WHEREFORE, PBGC respectfully requests that the Court issue an Order granting relief  
2 as follows:

- 3 1. Terminating the Plan pursuant to 29 U.S.C. § 1342(c);
- 4 2. Establishing October 31, 2004, as the termination date of the Plan pursuant to  
5 29 U.S.C. § 1348(a)(4);
- 6 3. Appointing PBGC statutory trustee of the Plan pursuant to 29 U.S.C. § 1342(c);
- 7 4. Requiring C&G Contractors, Inc., its agents, and any other person or entity having  
8 possession, custody or control of any records, assets or other property of the Plan, and any  
9 documents relating to the Plan, to transfer, convey and deliver all such records, assets, property  
10 and documents to PBGC; and
- 11 5. Granting any and all other relief that this Court deems just and proper.

12  
13  
14 Date: 22 April 2008

Respectfully submitted,

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17

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